

### III. REMARKS

1. Claim 1 is amended. Claims 32-36 are withdrawn. Claims 1-23 are pending in this application.
2. Claim 1 is amended to overcome the rejection under 35 U.S.C. 112, second paragraph.
3. Applicant respectfully traverses the Examiner's taking of Official Notice that the background sounds of Goldberg et al., U.S. Patent No. 6,125,175 ("Goldberg"), are equivalent to a "musical composition representing the affective state of the caller or called party" as is claimed by Applicant. The feature "affective state" as it is described and claimed by Applicant has a specific meaning. No such implication can be garnered from Goldberg. Even though the caller is attaching e.g. restaurant sounds as a background sound, that does not tell the called party, whether the caller is "happily" celebrating in the restaurant, just eating alone and feeling sad/lonely/etc., or feeling scared and trying to hide in a crowd in a restaurant. Therefore, the background sounds of Goldberg do not tell the called party anything about the affective state of the sender of the message. In Goldberg, the only purpose of the background sound is to create an impression of a locale of the caller. Evidence to support the Examiner's assertion is respectfully solicited.
4. Claims 1 and 2 are patentable under 35 U.S.C. 103(a) over Yonemura, Japanese Patent No. 2000172589, in view of Goldberg. Claim 1 recites in part that during the communication, the caller or called party receiving the message hears a musical composition representing the affective state of the caller or called party sending the message. Neither Yonemura nor Goldberg disclose or suggest what is claimed in Applicant's claim 1.

The Examiner notes that Yonemura does not mention the recipient of a message hearing a musical composition representing the affective state of the sender of the message. Instead, the recipient sees an image corresponding to the ID attached to the message. The abstract implies that Yonemura is meant to be used especially with text messages (i.e. such messages that the recipient is looking at).

Goldberg discloses that the calling party might desire to insert a background sound in a telephone call that is not actually generated by the locale of the calling party (col. 1, lines 21-23). Goldberg was discussed at length in Applicant's previous response to the office action dated July 28, 2004, the arguments of which are fully incorporated herein by reference. For some reason, the calling party in Goldberg wants the recipient of the call to believe that he is calling from another place than the one he is currently in. The background sounds in Goldberg include restaurant sounds, forest sounds, beach sounds, city traffic sounds, etc. (col. 2, lines 48-50). Goldberg does not disclose or suggest that during the communication, the caller or called party receiving the message hears a musical composition representing the affective state of the caller or called party sending the message as claimed in claim 1. There is no similarity to Applicant's invention. The only purpose of the background noises in Goldberg is to create an impression that the calling party is making a call from a location other than his/her actual location. The purpose of the background noise in Goldberg is not to convey the affective state of the caller and/or called party as called for in Applicant's claim 1. Thus, Yonemura and Goldberg do not disclose or suggest each feature of Applicant's invention as claimed.

In addition, there is no suggestion or motivation for one skilled in the art to combine Yonemura and Goldberg because they

do not aim to solve the same problem. In Yonemura, emotion "images" are attached to a message and in Goldberg sounds describing a location are attached to the voice message. There is no connection between these two references. If these references were combined, it would lead to a voice call having an emotional image on the screen and background sounds describing a desired locale, which is not Applicant's invention. As such, claim 1 is patentable over the combination of Yonemura and Goldberg. Claim 2 is patentable by reason of its dependency on claim 1.

5. Claims 3-19 and 22 are patentable under 35 U.S.C. 103(a) over Yonemura in view of Goldberg in further view of Cardina et al., U.S. Patent No. 6,151,500. Claim 17 contains limitations similar to those contained in claim 1 and is patentable over Yonemura and Goldberg for the reasons described above with respect to claim 1. Because neither Yonemura nor Goldberg, individually or in combination, disclose or suggest the features of claims 1 and 17 of the present application the combination of Yonemura, Goldberg and Cardina cannot as well. Thus, claims 1 and 17 are patentable over Yonemura, Goldberg and/or Cardina, individually or in combination. Claims 3-16, 18, 19 and 22 are patentable by reason of their respective dependencies.

6. Claims 20 and 21 are patentable under 35 U.S.C. 103(a) over Yonemura in view of Goldberg in further view of Cardina and in further view of Armanto et al., U.S. Patent No. 6,094,587. For the reasons described above neither Yonemura, Goldberg nor Cardina, individually or in combination, disclose or suggest the features of claim 17. Thus, the combination of Yonemura, Goldberg, Cardina and Armanto cannot as well. Therefore claim 17 is patentable over Yonemura, Goldberg, Cardina and/or Armanto, individually or in combination. Claims 20 and 21 are patentable by reason of their respective dependencies.

7. Claim 23 is patentable under 35 U.S.C. 103(a) over Yonemura in view of Goldberg in further view of Cardina and in further view of Makela et al., U.S. Patent No. 6,501,967. For the reasons described above neither Yonemura, Goldberg nor Cardina, individually or in combination, disclose or suggest the features of claim 17. Thus, the combination of Yonemura, Goldberg, Cardina and Makela cannot as well. Therefore claim 17 is patentable over Yonemura, Goldberg, Cardina and/or Makela, individually or in combination. Claim 23 is patentable by reason of its dependency.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,



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15 September 2005  
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